

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM #1 RCFE Personal Rights and Miscellaneous

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held July 27, 2016, as follows:

Office Building # 8  
744 P Street, Room 103  
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on July 27, 2016.

Following the public hearing, CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at [Public Hearing Information](http://www.cdss.ca.gov/ord/PG615.htm) (<http://www.cdss.ca.gov/ord/PG615.htm>). Additionally, all the information, which CDSS considered as the basis for these proposed regulations (i.e., rulemaking file), is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below:

CONTACT: Office of Regulations Development  
California Department of Social Services  
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## CHAPTERS

Residential Care Facilities for the Elderly (RCFE) Title 22, Division 6, Chapter 8.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The RCFE Act in existing law provides for the licensure and regulation of RCFEs. RCFEs are regarded by statute as a housing arrangement chosen voluntarily by people who are 60 years of age or over or their authorized representatives where varying levels and intensities of care and supervision, protective supervision, or personal care are provided based on the varying needs of a person pursuant to Section 1569.2 of the Health and Safety Code. Also pursuant to this statute, care in RCFEs may be provided to persons who are under 60 years of age with compatible needs as specified in Section 1569.316 of the Health and Safety Code.

Although existing regulations in the California Code of Regulations (CCR), Title 22, Division 6, Chapter 8, RCFE section 87468 enumerate resident personal rights based on CDSS broad authority in Health and Safety Code section 1569.30 to establish reasonable regulations necessary to govern RCFEs, prior statute has not enumerated personal rights for residents in RCFEs. Effective January 1, 2015, Assembly Bill (AB) 2171 (Chapter 702, Statutes of 2014):

- 1) Enacted a "bill of rights" for residents in privately operated RCFEs in a new Article 2.5 in the RCFE Act.
- 2) Required licensees to post a copy of the bill of rights in English and, if residents in a facility primarily read in another language, in any other language that can be read by five percent or more of the residents in the facility, and in a prominent location in the facility.

Effective January 1, 2015, Senate Bill (SB) 895 (Chapter 704, Statutes of 2014) required the Department to design, or cause to be designed, a poster that contains information on the appropriate reporting agency in case of a complaint or emergency for posting in RCFE.

Effective January 1, 2004, SB 211 (Chapter 409, Statutes of 2003) required licensees to afford residents the right to contact the Department and other entities in regard to complaints.

Existing regulations in the California Code of Regulations (CCR), Title 22, Division 6, Chapter 8, RCFE section 87468 established that each resident in a RCFE have 18 personal rights, which include such concepts as the right to be accorded dignity in his or her personal relationships with staff, residents and other persons; the right to be informed by the licensee of provisions of law regarding complaints and procedures to confidentially register complaints, including, but not limited to, the address and telephone number of the complaint receiving unit of the licensing agency. These regulations also established the requirement that licensees inform residents of their personal rights.

These proposed regulations amend the CCR, Title 22, section 87468 to incorporate statutory resident rights, for residents in a privately operated RCFE, into existing regulatory personal rights in this "Phase I" regulations package. They also require:

- 1) Residents in a publicly operated RCFE continue to be afforded the personal rights in existing regulations.
- 2) Residents in each RCFE are afforded the right to make complaints to specified agencies.
- 3) Notwithstanding the number of residents, all licensees shall post personal rights and complaint information.
- 4) In any RCFE where five percent or more of residents primarily read another language, personal rights and complaint information shall also be posted in other languages read by residents.
- 5) All licensees keep an accurate and confidential list of all residents and languages primarily read by residents and provide this list to CDSS upon request.

This regulations package will be followed by more extensive changes to resident personal rights regulations in a forthcoming "Phase II" regulations package.

These proposed regulations also make miscellaneous changes:

- 1) Notice of sale timeframe of a RCFE is amended from 60 days to 30 days pursuant to Health and Safety Code section 1569.191 enacted by AB 878 (Chapter 526, Statutes of 1993).
- 2) Unstageable wounds as a prohibited health condition is adopted in response to standards of care revised by the National Pressure Ulcer Advisory Panel.
- 3) Medication storage requirements are included for clarification.
- 4) An incorrect subsection reference is repealed.

The Licensing Complaint Poster (PUB 475, 1/15), which can be found on the CDSS Community Care Licensing Division website at [On-line Forms and Publications M - P](http://www.dss.cahwnet.gov/cdssweb/PG167.htm#pub) (<http://www.dss.cahwnet.gov/cdssweb/PG167.htm#pub>), is incorporated in its entirety, by reference, in the proposed regulations. This poster, or its alternative, must be posted by licensees in RCFEs to provide information on how to report a complaint or concern regarding a licensed care facility, resulted from the passage of SB 895 (Chapter 704, Statutes of 2014).

The CDSS anticipates that the proposed regulations will benefit the health and welfare of residents receiving care in privately operated RCFEs by ensuring that they have statutory personal rights that are to be observed by licensees. These personal rights are in the spirit of the Patient Bill of Rights implemented by the California Advocates for Nursing Home Reform, California Department of Public Health, and Medicare. Residents in both privately operated and publicly operated RCFEs will continue to have the protection of personal rights, and a modification to a personal right, in existing regulations. The personal rights being implemented in these regulations provide essential protection for residents of all RCFEs who are often vulnerable elderly and without advocates or family to ensure that their rights are observed. They are intended to prevent discrimination and promote fairness and equity. The proposed regulations will also ensure that residents, including those who read primarily in other languages, in all RCFEs have equal access to and awareness of personal rights and complaint information so that they can advocate for themselves when necessary. In addition, the proposed regulations will benefit licensee compliance in providing care to residents. These proposed regulations have no direct benefit to worker safety or the state's environment, as the proposed regulations only affect residents in California RCFEs.

Based on the evidence presented above and a review for any regulations that would relate to or affect the regulations being addressed, the CDSS finds that these proposed regulations are compatible and consistent with the intent of the Legislature in adopting AB 2171, AB 878, SB 895 and SB 211. The CDSS also finds that these proposed regulations are compatible and consistent with the only existing state regulations that concern RCFE personal rights.

#### FORM INCORPORATED BY REFERENCE

Licensing Complaint Poster (PUB 475, 1/15)

#### COST ESTIMATE

1. Costs or Savings to State Agencies: Community Care Licensing Division received one Associate Governmental Program Analyst position via AB 2171 (Chapter 702, Statutes of 2014) for purposes of writing these regulations. No other costs or savings effect on state agencies.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: None.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: None.

#### LOCAL MANDATE STATEMENT: None

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

AB 2171 expands the scope of a crime. SB 211 creates a new crime. Both impose a state-mandated local program. However, neither of these laws require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

## STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Expanded personal rights regulations to implement AB 2171 would apply to privately operated RCFEs. Existing regulatory personal rights would continue to apply to both privately and publicly operated RCFEs. A modified regulation affording residents the personal right to make complaints to specified agencies would apply to all RCFEs, regardless of whether they are privately operated or publicly operated. Regardless of number of residents, all licensees would be required to post personal rights and complaint information, and post this information in other languages when five percent or more of residents primarily read in another language.

This determination was made based on that there will be some administrative costs to licensees of all RCFEs as a result of statutory requirements enacted by AB 2171, SB 211 and SB 895. Licensees would need to update admission agreements as they relate to resident personal rights and facility procedures as they relate to posting these rights and complaint information in other languages read by five percent or more of residents in a facility. Licensees would also need to develop and implement a method for collecting information from residents on the language they primarily read and compile this information into a single list that is kept accurate and current. The CDSS anticipates that this list will result in negligible cost to licensees since existing regulations in the CCR, Title 22, section 87508 require a register of residents, which may be expanded to address languages read by residents. In addition, licensees would need to update the posted resident personal rights and/or complaint information whenever the composition of languages primarily read by residents changes based on the five percent rule.

Further, miscellaneous changes to regulations that do not address resident personal rights will require licensees of RCFEs to not accept or retain residents with unstageable wounds. However, this and other miscellaneous changes do not have any statewide adverse economic impact directly affecting businesses or private persons in California.

## STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The proposed regulations in regard to personal rights would apply to privately operated RCFEs, while regulations in regard to posting personal rights and complaint information would apply to all RCFEs. The CDSS is aware that there will be some administrative cost impacts that a representative private person or business would incur in reasonable compliance with the statutory requirements enacted by AB 2171, SB 211 and SB 895. These administrative cost impacts are described under "Statement of Significant Adverse Economic Impact on Business" above.

## SMALL BUSINESS IMPACT STATEMENT

The proposed regulations would apply to all RCFEs. RCFEs with a capacity of six or less comprise approximately 80 percent of RCFEs licensed by CDSS. The CDSS has made an initial determination that there will be some administrative cost impacts to small businesses as a result of statutory requirements enacted by AB 2171, SB 211 and SB 895. These administrative cost impacts are described under "Statement of Significant Adverse Economic Impact on Business" above.

## STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The proposed amendments to regulations will neither create nor eliminate jobs in the State of California, nor result in the creation of new business, or expansion or elimination of existing businesses within the State of California. The benefits to the health and welfare of California residents within the RCFE system are as a result of the passage of AB 2171 and SB 211, which modify some of, and add to, the resident personal rights that have been in the CCR, Title 22, Division 6, RCFE, section 87468 since 2008. Further benefits are as a result of the passage of SB 895, which requires that licensees post a poster on how to file complaints, modifying the requirement to post procedures for filing complaints that has been in the CCR, Title 22, Division 6, RCFE, section 87468, since 2008. Other amendments to regulations that do not address personal rights, but are the result of miscellaneous changes in law or standards of care either modify, or are consistent with, requirements that have been in the CCR, Title 22, Division 6, RCFE, since 2008. For these reasons, CDSS has determined that the proposed regulations will not have an impact on worker safety, the state's environment, or the creation or elimination of jobs, nor the creation of new business, or the expansion or elimination of existing businesses in the State of California.

## STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

## STATEMENT OF ALTERNATIVES CONSIDERED

In developing the regulatory action, CDSS did not consider any alternatives because no reasonable alternative has been presented for review.

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## AUTHORITY AND REFERENCE CITATIONS

Authority: 1569.30, Health and Safety Code. References: Sections 1569.1, 1569.191, 1569.265, 1569.267, 1569.269, 1569.31, 1569.312, 1569.33, 1569.885 and 1569.889, Health and Safety Code; and Section 5350, Welfare and Institutions Code.

## CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

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